

ESTTA Tracking number: **ESTTA250490**Filing date: **11/21/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Fantis Foods, Inc.		
Entity	Corporation	Citizenship	New York
Address	60 Triangle Blvd. Carlstadt, NJ 07072 UNITED STATES		

Attorney information	Vanessa A. Ignacio, Esq. Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068-1791 UNITED STATES lstrademark@lowenstein.com, vignacio@lowenstein.com Phone:973-597-2500
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**Applicant Information**

Application No	77345900	Publication date	10/28/2008
Opposition Filing Date	11/21/2008	Opposition Period Ends	11/27/2008
Applicant	Dioni Foods, Inc. 1412 Main Street Cotuit, MA 02635 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. All goods and services in the class are opposed, namely: Marketing services, retail store services and distributorship services all in the field of international and domestic food products, namely, meats, processed and staple foods
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1828405	Application Date	04/11/1988
Registration Date	03/29/1994	Foreign Priority Date	11/16/1987
Word Mark	DODONI		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 029. First use: [PASTEURIZED MILK, SOUR MILK,] SHEEP ETA CHEESE, GRUYERE CHEESE (EVAPORATIVE), COEVALITY CHEESE, SHEEP GRUYERE, ENCORING CHEESE, GOAT CHEESE,[ WHEY CHEESE, CREAM CHEESE, WHEY,] COW YOGHURT, SHEEP YOGHURT, STRAINED YOGHURT
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Attachments	DIONI - Pleading for Notice of Opposition.pdf ( 5 pages )(19977 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Vanessa A. Ignacio/
Name	Vanessa A. Ignacio, Esq.
Date	11/21/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/345,900

Published in the Official Gazette on October 28, 2008

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FANTIS FOODS, INC., : Opposition No. \_\_\_\_\_

Opposer, :

-against- :

**NOTICE OF OPPOSITION**

DIONI FOODS, INC., :

Applicant. :

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Fantis Foods, Inc., a corporation with a business address at 60 Triangle Boulevard, Carlstadt, New Jersey 07072 (“Opposer”), believes that it will be damaged by registration of the proposed trademark, “DIONI” (the “Proposed Trademark”) sought to be registered on the Principal Register on an intent-to-use basis by Dioni Foods, Inc. (“Applicant”) in Application Serial No. 77/345,900, filed on December 6, 2007 and published in the Official Gazette on October 28, 2008 (the “Application”). Opposer submits this Notice of Opposition pursuant to 37 CFR § 2.101 and pursuant to TBMP § 303.01.

Opposer hereby opposes registration of the Application on the following grounds:

**OPPOSER’S INTEREST IN THE DODONI TRADEMARK**

1. Opposer, established more than 75 years ago in the U.S., is an importer and distributor of Greek and Mediterranean food and beverage products throughout North America.

2. Opposer is the exclusive importer of goods sold under the brand DODONI, which is protected by a United States trademark registration (Registration No. 1,828,405) in International Class 29 for “[pasteurized milk, sour milk,] sheep eta cheese, gruyere cheese (evaporative), coevality cheese, sheep gruyere, encoring cheese, goat cheese,[ whey cheese, cream cheese, whey,] cow yoghurt, sheep yoghurt, strained yoghurt” (the “Registered Mark”). The Registered Mark enjoys incontestible status, is owned by Agrotiki Viomichania Galaktos Ipirou Dodoni A.E. (Agricultural Dairy Industry Of Epirus Dodoni S.A.) (the “Registrant”), and has a registration date of March 29, 1994 and a priority date of November 16, 1987.

3. Registrant adopted, first used, and registered its DODONI trademark prior to Applicant’s Application for registration of the term DIONI. Opposer has been the exclusive importer of DODONI products, and has been using the DODONI trademark, in the United States for at least the past twenty-two years.

4. Opposer’s use of the DODONI trademark predates any date upon which Applicant could rely for purposes of priority. Thus, Opposer has valid, subsisting, senior rights over any use and application by Applicant of the DODONI trademark or marks confusingly similar thereto, including DIONI, which is the subject of the Application.

**THE PROPOSED MARK IS CONFUSINGLY SIMILAR TO THE REGISTERED MARK**

5. Applicant seeks to register, on an intent-to-use basis, DIONI in International Class 35 in connection with “Marketing services, retail store services and

distributorship services all in the field of international and domestic food products, namely, meats, processed and staple foods.”

6. Applicant’s use and proposed registration of DIONI for such international and domestic food products creates a likelihood of confusion between the Proposed Trademark and Opposer’s Registered Mark. First, the two marks are confusingly similar in sound and appearance.

7. Second, because food products are often marketed and sold together, the goods of Applicant and Opposer are “so related that the circumstances surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source.” TMEP § 1207.01(a)(i). The high degree of relatedness between the goods to be marketed, sold and/or distributed by Applicant under its Proposed Trademark and by Opposer under the Registered Trademark, coupled with the linguistic, visual, and auditory similarity between the marks creates confusingly similar connotations and commercial impressions. Thus, the two key considerations governing a likelihood of confusion analysis—relationship between the goods and/or services and similarity between the marks—demonstrate that consumers would likely be confused if the subject Application matures into a registration.

8. Third, under the “expansion of trade doctrine,” Opposer is entitled to “protection against the registration of a similar mark on products that might reasonably be expected to be produced by [it] in the normal expansion of his business.” TMEP § 1207.01(a)(v).

9. Finally, Opposer’s longstanding use and Registrant’s incontestible registration should be given due deference to protect the senior users of the Mark from adverse

commercial impact due to use and registration of a similar mark for similar goods and services by a junior user. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination must be resolved in favor of Opposer, who, as exclusive distributor of DODONI branded goods, stands in the place of Registrant. *See Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65 (Fed. Cir. 1988).

10. Accordingly, for the reasons set forth above, Applicant's use and registration of DIONI would be confusingly similar to the Registered Mark used by Opposer.

11. For the foregoing reasons, the registration of the Application would be inconsistent with and in contravention to Opposer's prior and superior rights in the Registered Mark and the statutory grant of exclusivity of use to the DIONI trademark. Moreover, such registration would impair Opposer's investment and goodwill in the Registered Mark.

12. Given Opposer's senior, continuous use of the Registered Mark, Opposer would be seriously and irreparably injured by the granting of a certificate of registration to Applicant for the Application because such registration would:

- (a) support and assist Applicant in the confusing and misleading use of Applicant's Proposed Trademark sought to be registered in violation of Sections 2(d) and 13(a) of the Lanham Act, 15 U.S.C. §§ 1052(d), 1063(a);
- (b) give color of exclusive statutory rights to Applicant in violation and derogation of Opposer's prior and superior rights; and
- (c) tend to falsely and erroneously suggest a connection with Opposer and/or Registrant.

WHEREFORE, Opposer believes that it will be seriously damaged by registration of Applicant's Proposed Trademark and, therefore, Opposer, by its undersigned attorneys,

respectfully requests that his opposition be sustained and that registration of the Proposed Trademark be refused.

Please charge the filing fee to Deposit Account No. 501358.

Respectfully submitted,

LOWENSTEIN SANDLER PC  
65 Livingston Avenue  
Roseland, NJ 07068  
973.597.2500  
Attorneys for Opposer

/Vanessa A. Ignacio/  
(Electronic Signature)  
By: Vanessa A. Ignacio, Esq.  
Date: November 21, 2008